

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff

v.

GAYLENE I. BOLANAS, etc.,

Defendants,

CASE NO. 1:13-CR-0362 AWI BAM

**ORDER DENYING MOTION FOR
DISMISSAL PURSUANT TO CESTUI
QUE VIE TRUST**

(Document #198)

Defendant Gaylene I. Bolanas is one of several defendants in this criminal action brought by the United States of America. Defendant is representing herself in pro se. In Court, on August 19, 2014, Magistrate Judge McAuliffe, appointed Attorney James R. Homola as stand-by counsel. A formal order appointing Attorney James R. Homola was issued the next day, August 20, 2014.

On December 15, 2014, Defendant Bolanas filed a document entitled "FILE ON DEMAND, Cestui Qui Vie Trust". In this document, Defendant Bolanos asks the Clerk of the Court to dismiss all charges and issue an immediate dismissal. Specifically, Defendant Bolanos asks for (1) all charges to be dismissed with prejudice and an immediate judicial acknowledgement of the dismissal, (2) provide all transcripts of hearings at no cost; (3) the release of all bonds, passports, or other items held by Pretrial Services and; and (4) removal of all monitors.

On December 12, 2014, Defendant Bolanas filed a request to be allowed access to the Court's electronic docketing system. The same day, Defendant Bolanas filed another request to be given free transcripts.

1 The basis of Defendant Bolanas motions are that Defendants and the United States entered
2 into some form of contract. Defendant Bolanas claims that the Federal Government has agreed to
3 indemnify and to hold Defendant Bolanas harmless. Defendant Bolanas seeks relief through a
4 Cestui Que Trust.

5 Black's A Cestui que trust is defined as:

6 He who has a right to a beneficial interest in and out of an estate the legal title to
7 which is vested in another. The person who possesses the equitable right to
8 property and receives the rents, issues, and profits thereof; the legal estate of which
is vested in a trustee. The beneficiary of a trust.

9 In general, this common-law trust provided that a trustee with an irrevocable trust must
10 produce trust-related information to the beneficiary on a reasonable basis. Restatement
11 (Third) of Trusts § 82 (2005).

12 One of the fundamental common-law duties of a trustee is to preserve and maintain
13 trust assets and this encompasses determining exactly what property forms the
14 subject-matter of the trust [and] who are the beneficiaries. The trustee is thus
15 expected to use reasonable diligence to discover the location of the trust property
16 and to take control of it without unnecessary delay. A trustee is similarly expected
17 to investigate the identity of the beneficiary when the trust documents do not
clearly fix such party" and to "notify the beneficiaries under the trust of the gifts
made to them."

18 Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.,
19 472 U.S. 559, 572 (1985) (internal citations and quotes omitted).

20 Defendant Bolanos is incorrect that the United States began these criminal proceedings
21 because of a contract and/or trust for which the United States is the trustee to and Defendant
22 Bolanos is the beneficiary. This criminal action was initiated by the United States based on
23 Defendant Bolanos's and her co-defendants alleged violation of criminal laws enacted by the
24 United States. Defendant Bolanas cannot simply demand this action be dismissed based on some
25 theory of trust or contract law.
26

27 The Supreme Court has stated that "common-law principles are relevant only when applied
28 to a specific, applicable, trust-creating statute or regulation. United States v. Jicarilla Apache

1 Nation, 131 S.Ct. 2313, 2329 (2011). There is simply no trust or contract between Defendant
2 Bolanas and the United States. Thus, there is no basis for Defendant Bolanos's filing.

3 Accordingly, Defendant Bolanos' requests for relief pursuant to a "Cestui Qui Via Trust"
4 are DENIED.

5
6 IT IS SO ORDERED.

7 Dated: December 17, 2014


8 SENIOR DISTRICT JUDGE